
From: Dennis Murray
Sent: 29 April 2008 11:39
To: Geoff Gilbert
Subject: FW: Schedule 4

Geoff,
Copy FYI

Dennis

-----Original Message-----

From: Dennis Murray
Sent: 29 April 2008 09:17
To: 'Tom.Murray@bilfinger.co.uk'; 'Scott.McFadzen@bilfinger.co.uk';
'Richard.Walker@bilfinger.co.uk'
Cc: Steven Bell; Stewart McGarrity; Susan Clark; Eric Smith
Subject: RE: Schedule 4

Tom,

You should not be placed in a position whereby you are asked to respond to matters that you were not previously fully involved.

My email was clear and unambiguous.

The main point is captured in the penultimate paragraph of my email.

Your Prelims breakdown and Schedule of Rates for insertion into Schedule 4 was submitted by Scott McFadzen on 22nd February 2008 in the 'vierendeel' files. Your price is fixed for the duration of the Contract and the Schedule of Rates likewise. Schedule 4 was progressed on this basis. Several meetings were held to agree Schedule 4 since February and the document evolved by negotiation and agreement. The only point outstanding on Schedule 4 as of last week was to agree a percentage add on for Consortium Prelims (a matter which you were insistent upon) and we duly did this using the base information that you provided and the same methodology that you had used to calculate an overall percentage. In other words we have accepted your proposal for Consortium Prelims add on. The position was then finalised upon agreement of this percentage by your email submission of 22nd April. An add on to your Schedule of Rates for inflation was not an issue raised by you in your February submission nor was it intimated at any of the lengthy meetings to discuss Schedule 4 and it is therefore not acceptable to introduce this as an issue now.

Regards
Dennis

-----Original Message-----

From: Tom.Murray@bilfinger.co.uk [mailto:Tom.Murray@bilfinger.co.uk]
Sent: 28 April 2008 18:10
To: Dennis Murray
Cc: Steven Bell; Richard.Walker@bilfinger.co.uk; Scott.McFadzen@bilfinger.co.uk
Subject: Re: Schedule 4

Dennis,

Please refer to my comments in CAPS below.....

Regards,

Tom Murray
Commercial Manager

Bilfinger Berger UK Limited

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Dennis Murray
<Dennis.Murray@tie.ltd.uk>

24/04/2008 18:07

"Tom.Murray@bilfinger.co.uk"
<Tom.Murray@bilfinger.co.uk>

To

cc

Steven Bell
<Steven.Bell@tie.ltd.uk>

Subject

Schedule 4

Tom,

I acknowledge receipt of your mark up on Appendix G.

This is completely unacceptable for the following reasons.

Appendix G has been the subject of many meetings and discussions in recent times. UNFORTUNATELY I HAVE NOT BEEN INVOLVED

The chronology of events is as follows.

A Schedule of Rates was submitted by you and accepted by tie some time ago.

I ASSUME YOU ARE REFERRING TO THE PRICED BQ AND NOT MY RATE PROPOSALS I SENT LAST MONTH The core contract and the process for valuing change was drafted on the basis of the application of your rates for measured work.

The only matter of contention was that we required to agree a method of reimbursing you for site overheads for work that would be priced on the basis of Actual Cost in addition to the previously stated percentages for head office overheads that was agreed. We asked you to provide an explanation of relevant items in your prelims to allow us to complete this. This explanation of Prelims breakdown was provided and extensive debate was had regarding the operation of the constituent parts of the Prelims to cover site overheads in this regard. Our view was that it could not be done by applying an across the board percentage however we subsequently accepted that we could cover the Consortium Prelims part only as a percentage and ultimately accepted a 7.4% addition to cover this as per your last submission. Any further Prelims items would require to be assessed on its own merits. This was duly drafted as agreed.

You are now seeking to completely change matters by:

- (a) Introducing a set of predetermined rates for use in respect

of Clause 80.6.3 as opposed to the fair rates and prices basis that is stated in the core contract and was acceptable previously THE POSITION HAS NOT CHANGED - THESE ARE OUR PROPOSED FAIR RATES AND PRICES.

(b) Introducing a set of Daywork Rates to be applicable to a valuation in respect of Clause 80.6.4 as opposed to the Actual Cost basis that is stated in the core contract and was acceptable previously.OK - SUBJECT TO AN ACCEPTABLE DEFINITION OF ACTUAL COST

(c) Introducing Contract Price Fluctuation Indices to previously agreed fixed price rates. OUR PRICE IS FIXED BUT AS YOU WILL APPRECIATE FROM THE PRELIMINARIES ANALYSIS ALL THE FIXED PRICE ELEMENT (ESCALATION) HAS BEEN REMOVED IN THE PRELIMINARIES SECTION. AS THIS IS NOT INCLUDED IN THE AGREED PRELIMS OR RATES IT NEEDS TO BE ADDED.THIS CAN BE APPLIED EITHER AS A PRE-AGREED %AGE OR APPLIED BASED ON INDICES THERE ARE PROS AND CONS FOR EACH FOR BOTH TIE AND INFRACO.

The Schedule of Rates including your Prelims build up was submitted to tie on 22nd February 2008 by email from Scott McFadzen. The rates offered were to determine the value of changes and tie accepted them on this basis. All rates are deemed to be complete and are deemed fixed for the contract duration. At no time was it ever requested or stated by you or inferred that these rates were to be the subject of Contract Price Fluctuations. It is therefore not now acceptable that you are seeking to apply Contract Price Fluctuations to previously agreed rates.

We therefore do not accept these wide scale proposed changes for the reasons noted above and request that you accept the draft that was amended by agreement with you.

Dennis

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